## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

| Jhishayon Xcell, |     | Plaintiff, | )           | Civil Action No.: 6:08-3114-HMH-BHH           |
|------------------|-----|------------|-------------|-----------------------------------------------|
|                  | vs. |            | )<br>)<br>) | REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE |
| SCSI, LLC,       |     |            | )<br>)      |                                               |
|                  |     | Defendant. | )           |                                               |

The plaintiff is proceeding in this action *pro se*. On July 23, 2009, the defendant filed a Motion to Dismiss for Lack of Prosecution. On July 24, 1009, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary dismissal procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding *pro se*, the court filed a second order on August 31, 2009, giving the plaintiff through September 23, 2009, to file his response to the motion to dismiss. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The plaintiff elected not to respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution with prejudice, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989). Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989), cert. denied, 493 U.S. 1084 (1990).

s/Bruce H. Hendricks United States Magistrate Judge

September 29, 2009 Greenville, South Carolina